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TAN LEE CHOON

v.

LEE CHOOI HOO

B

HIGH COURT MALAYA, KANGAR
ZAMANI A RAHIM JC
[WRIT NO: 22-14-2007]
25 NOVEMBER 2007

C ***CIVIL PROCEDURE:*** *Injunction - Interim injunction - Application for - Injunction to restrain defendants from damaging structure on land and from developing land into commercial lots - Whether association had every right to develop land - Whether association registered proprietor of land - Whether association recognised the Rumah Tokong (deity) and gave* D *assurances that it would be preserved - Whether preventing association's endeavour to develop land unfair and unequitable - Whether plaintiff's resort to injunctive relief inappropriate and misconceived*

This was an *ex parte* application filed by the plaintiff for (i) an E interim injunction restraining the defendants from damaging any structure situated on the land held under Grant 646, Lot 42, Section 2, Town of Kangar, District of Perlis ('the said land') pending the trial of this case and (ii) an interim injunction restraining the defendant from commencing construction of any F form or continuing with the development of the said land into commercial lots, pending the resolution of the trial of this case. The plaintiff was the chairman of a committee of Rumah Tekong Poh Aun Keong ('Rumah Tokong Committee'). Over a hundred years ago, the Hokkien Chinese settled down in Kangar and the G Hokkien Chinese community proceeded to establish a place of worship. On 8 January 1908, the said land was alienated to them by the Raja of Perlis and was registered in the names of a group of people ('the trustees') for the Hokkien Chinese community in Kangar. The Perlis Hokkien Assocation ('the association') was established in 1953 by the Hokkien Chinese community. In 1958, H the trustees had allowed the association to construct building/hall on an empty space on the said land, not used by the Rumah Tokong and a fence was built to separate the Rumah Tokong and the association building/hall. The Rumah Tokong committee had continued to manage and operate the day to day affairs of the I Rumah Tokong while the association managed its building/hall. By

a vesting order granted in 1976, the said land was duly transferred to the association by the trustees. In early 2007, a dispute began to emerge. On 20 February 2007, the association had formed a sub-committee ('the association sub-committee') to manage the Rumah Tokong and on 6 March 2007 the association sub-committee had put up a notice in the Rumah Tokong claiming that they were the sole authority to manage the Rumah Tokong. On 9 March 2007, the Rumah Tokong committee had called for a meeting to discuss their objections to the formation of the association sub-committee and the exhibition of the aforesaid notice at the Rumah Tokong. A motion was passed by the Rumah Tokong committee wherein it opposed any plan or action by the association to develop the said land into commercial lots. On 7 August 2007, the association had already begun its development of the said land by erecting certain structures which, the plaintiff claimed, would necessarily cause the demolishment of the Rumah Tokong's property. It was the defendants' stand that the association was the legal registered owner of the said land and was entitled to develop it without the interference from the plaintiff. The plaintiff, however, argued that the said land was alienated by the Raja of Perlis to the trustees in perpetuity for the benefit of the Hokkien Chinese community for the purpose to have the Rumah Tokong on the said land. Hence, according to the plaintiff, the association's commercial development of the said land was therefore illegal and contrary to the original purpose of alienation. The plaintiff submitted that there was a serious question to be tried as to whether the Rumah Tokong committee had a legitimate interest and expectation that the court should protect.

Held (dismissing plaintiff's application):

(1) The association was the registered proprietor of the said land. It had every right to develop the said land in accordance with the law unimpeded. The said land had been properly converted to 'bangunan' which was duly approved by Jabatan Pengarah Tanah Galian, Perlis. Similarly, the building plans were also approved by Majlis Perbandaran Kangar. Substantial amount of fees and additional premiums had been paid by the association to the relevant authorities. To put a clog in the form of injunction to the association's endeavour to develop the said land was certainly unfair and unequitable. Further, the defendant had repeatedly averred that the association was not

going to demolish, destroy, damage, remove or disturb the Rumah Tokong. On the contrary, the Association recognised the sacredness of the Rumah Tokong and had ensured to preserve it in its original state. The Association had gone to great pains to apply a separate document of title to the land upon which the Rumah Tokong was situated. The crux of the plaintiff's grievances was really about the management of the Rumah Tokong which was taken over by the association. That being the case, the proper remedy would be to pray for a declaration that Rumah Tokong be managed and operated by the plaintiffs. The plaintiff's resort to injunctive relief, as in this application, was inappropriate and misconceived.

Case(s) referred to:

Chellapa K Kalimuthu v. Sime UEP Properties Bhd [1999] 3 CLJ 247 CA ***(refd)***

Chin Sau Min & Anor v. Sia Sung Ho & Anor [2005] 3 CLJ 113 HC ***(refd)***

Keet Gerald Francis Noel John v. Mohd Noor & Ors [1995] 1 CLJ 293 CA ***(refd)***

Mohamed Mustafa A Nalla Ibrahim & Anor v. Syed Mohamed Madar Rawther [1995] 1 CLJ 219 HC ***(refd)***

Timur Permai Holdings Sdn Bhd v. Soon Seng Plywood & Timber Sdn Bhd [1996] 3 CLJ 470 HC ***(refd)***

Legislation referred to:

Societies Act 1966, s. 41(1)(b)

Other source(s) referred to:

Malaysian High Court Practice, 1998 Desk Edition, p 1351

For the plaintiff - M Lavendran; M/s Ngeow & Tan
For the defendant - S Devandran; M/s Devandran & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Zamani A Rahim JC:

Interlocutory Injunction

[1] This is an *ex parte* application in encl. 4 filed by the plaintiff on 13 August 2007 for the following orders:

a) an interim injunction restraining the defendant whether by themselves or by their servants or agents from destroying, removing, disturbing and/or damaging any structure and/or building and/or deity situated on the Land held under Grant 646, Lot 42, Section 2, Town of Kangar, District of Perlis pending the resolution of the trial of this case.

b) an interim injunction restraining the defendant whether by themselves or by their servants or agents from commencing construction of any form and/or proceeding and/or continuing with the development of the land held under Grant 646, Lot 42 Section 2, Town of Kangar, District of Perlis into commercial lots, pending the resolution of the trial of this case.

[2] For brevity, the land held under Grant 646, Lot 42, Section 42, Town of Kangar, District of Perlis is hereinafter referred to as "the said Land".

[3] The *ex parte* application came before me on 13 August 2007 on a certificate of urgency claiming that a ceremony was going to be held on 19 August 2007 for piling and commencement of the construction works on the said land. I have directed the plaintiff to serve all the documents relating to the application to the defendants and fixed 17 August 2007 for *inter partes* hearing. This is the hearing.

Facts Ascertained From Plaintiffs' Affidavits

[4] The brief facts of the plaintiffs' application may be gathered from the affidavits of Tan Lee Choon (first plaintiff) and Yap Hock Siew (second plaintiff) which were affirmed on 13 August 2007 and 24 August 2007 respectively.

[5] The plaintiff is the chairman of a committee of Rumah Tokong Poh Aun Keong which is situated at No. 7 Jalan Indera Kayangan Kangar, Perlis. (hereinafter referred to as the "Rumah Tokong committee").

[6] Over a hundred years ago the Hokkien Chinese settled down in Kangar. They came from Hokkien province in China. The Hokkien Chinese community proceeded to establish a place of worship.

[7] On or about 8 January 1908 the said land was alienated to them by the Raja of Perlis. The said land was registered in the name of Ching Swee Tai, Oh Bian Hock, Quah Chee Teng and Ooi (hereinafter collectively called as "the trustees") for the Hokkien Chinese community in Kangar.

[8] The plaintiff claimed that the category of land use of the said land was for "Rumah Tokong" only. There is "Rumah Tokong" on the said land built in 1885. It was built from donations contributed by the Hokkien Chinese community in or around Kangar.

[9] Since 1963, the daily affairs of Rumah Tokong was managed by the Rumah Tokong committee. Its activities include, *inter alia*:

a) maintaining a bank account No. 0090171109802 at Maybank Kangar. The signatories of the cheques were determined by the Rumah Tokong committee,

b) supervising constructions and extension works at the Rumah Tokong,

c) issuing receipt to the donors for the donations received,

d) organizing the Rumah Tokong functions,

e) casting a list of donors who contributed to the Rumah Tokong committee on its wall.

[10] The Perlis Hokkien Association (hereinafter referred to as "the Association") was established in 1953 by the Hokkien Chinese community. In 1958 the trustees had allowed the Association to construct building/hall on an empty space on the said land, not used by the Rumah Tokong. A fence was built to separate the Rumah Tokong and the Association building/hall.

[11] The Rumah Tokong committee had continued to manage and operate the day to day affairs of the Rumah Tokong while the Association managed its building/hall.

[12] By a vesting order granted in 1976 the said land was duly transferred to the Association by the Trustees. But the plaintiff claimed that the beneficial ownership of the said land was still remained with the Hokkien Chinese community in Kangar.

[13] A dispute began to emerge in early 2007. On 20 February 2007, the Association had formed a sub-committee (hereinafter referred to "the Association sub-committee") to manage the Rumah Tokong and thus claimed that the Association had attempted to usurp the daily operations of the Rumah Tokong by the Rumah Tokong committee.

[14] On 6 March 2007 the Association sub-committee had put up a notice in the Rumah Tokong claiming that they were the sole authority to manage the Rumah Tokong. No other organizations or bodies were allowed to manage the Rumah Tokong and used its assets without the consent of the Association sub-committee.

[15] On 9 March 2007, the Rumah Tokong committee had called for a meeting to discuss their objections to the formation of the Association sub-committee and the exhibition of the aforesaid notice at the Rumah Tokong. The Rumah Tokong committee was barred from conducting its meeting in the hall of the Rumah Tokong. The meeting had to be switched and held in a restaurant.

[16] The Rumah Tokong committee too was barred from using the Rumah Tokong's hall to hold its biannual AGM which was scheduled on 11 April 2007 to elect a new Rumah Tokong committee for the year 2007 until 2009. The AGM on 11 April 2007 was forcefully blocked by the Association members. To avoid untoward incidents from happening and on the advice of the police, the AGM was conducted at a different venue. At this meeting, 15 new committee members of Rumah Tokong were elected to manage and operate the affairs of the Rumah Tokong. In this meeting too, a motion was passed wherein the Rumah Tokong committee opposed to any plan or action by the Association to develop the said land into commercial lots.

[17] On 8 July 2007, the Association development committee had advertised in the Sin Chew Daily, calling for a tender for piling works on the said land to construct six units of 3-storey shop houses.

[18] Again on 10 July 2007, the advertisement was made in the same Chinese daily inviting qualified contractors to build and construct five units of 3-storey shop houses on the said land.

[19] On 20 July 2007, an article in the Nanyang Siang Pao stated that the Association had obtained the development order and the building plans were approved for the construction of the shop-houses. It was also reported that the piling ceremony on the said land, indicating the commencement of the development was going to be held on 19 August 2007.

[20] Sometime on 7 August 2007, the Association had already begun its development of the said land by erecting certain structures and/or fences which, the plaintiff claimed, would necessarily cause the demolishment of the Rumah Tokong's property.

[21] On 19 August 2007 the piling ceremony was carried out on the said land by the defendant indicating the beginning of the development of the said land into shop houses.

[22] On 22 August 2007 the Association had begun to demolish the covered car park and the concrete fence to facilitate and expedite the constructions works. All these activities showed the Association's intention to proceed with the development speedily.

[23] At this juncture, it is pertinent to note that there were two other applications made earlier. The first suit dated 2 July 2006 *vide* Kangar High Court, Originating Summons No. 24-84-2006 filed by Yap Hock Siew who claimed to be the office bearer of Persatuan Penganut Tokong Cina Cheng (Poh Aun Keong) Kangar, Perlis seeking an injunction and/or declarations against the Persatuan Hokkien Perlis *inter alia:*

> (a) Satu Perintah Injunksi melarangkan Defendan merosakkan, merobohkan satu dengan mana mana cara menganggu bangunan Tokong Cina Cheng (Poh Aun Keong) Kangar, atau Pentas Dewan, Kolam Air Feng Sui, Pembakar alat-alat suci atau mana bahagian bangunan atau menganggu atau memotong bekalan air dan elektrik yang berkenaan dengan Tokong Cina Cheng tersebut dan yang semuanya terletak di atas tanah yang dikenali seperti Geran No: 646, Lot 42, Seksyen 2, Bandar Kangar, Perlis oleh Defendan atau pekerjaannya atau agennya atau mana-mana pihak yang menuntut di bawah nama Defendan sehingga keputusan akhir Mahkamah di buat.

(b) Satu Deklarasi bahawa Defendan adalah pemegang amanah (trustee) bagi kepentingan Tokong Cina Cheng Kangar, Perlis dan seperti pemegang amanah bagi Tokong tersebut tidak melakukan sesuatu tindakan berkenaan dengan Tokong tersebut yang mana akan membawa keadaan yang tidak bersatu padu kepada ahli-ahli Plaintif dan Defendan dan/atau antara kalangan komuniti Hokkien di Bandar Kangar, Perlis.

(c) Satu deklarasi bahawa sebagai pemilik tanah dalam geran yang dikenali sebagai Geran 646, Lot No: 42, Seksyen 2, Bandar Kangar, Perlis melalui Perintah Mahkamah Saman Pemula No: 168/1976 bertarikh 6.3.1976, Defendan, sebagai pemegang amanah (trustee) bagi tanah tersebut melantik dan mendaftarkan dalam geran tersebut 4 orang dewasa yang dihormati dalam kalangan komuniti Hokkien, Kangar, Perlis seperti pemegang amanah bagi tanah tersebut selepas mahkamah yang mulia ini meluluskan nama-nama 4 orang dewasa tersebut selepas permohonan selanjutnya yang akan dibuat oleh Plaintif.

[24] The High Court at Kangar had dismissed the above application on 14 December 2006. Dissatisfied with the decision, an appeal was filed by the plaintiff to the Court of Appeal. The decision is pending.

[25] The second suit dated 5 April 2007 was filed by one Ng Thien Lam who claimed to be an acting Chairman and office bearer of Rumah Tokong Poh Aun Keong *vide* Kangar High Court Writ of Summons No: 22-05-2007. In this second suit, Ng Thien Lam had applied for an interim injunction, praying for the following orders:

a) A declaration that the said Temple known as Rumah Tokong Poh Aun Keong is an independent organization/entity which belongs to the entire Hokkien Chinese community in Kangar, Perlis and its surrounding areas;

b) A declaration that the said Temple known as Rumah Tokong Poh Aun Keong has, is and shall continue to be operated by the said Committee under the rules as stated at para 9 above;

c) A consequential declaration that the Rumah Tokong Poh Aun Keong has, is and shall continue to be operated by the said Committee under the rules as stated at para 9 above;

A d) A consequential declaration that the Rumah Tokong Poh Aun Keong is a temporal and spiritual organization; and

e) An injunction restraining the defendants whether by themselves or by their servants or agents from prohibiting the plaintiffs
B and/or the said Committee use of the temple and/or the building/hall situated on the said land.

[26] In addition, Ng Thien Lam had also applied for interlocutory injunction in the following terms:

C a) an interim injunction restraining the defendant whether by themselves or by their servants or agents from preventing the plaintiff and the Rumah Tokong Poh Aun Keong Committee entry into and usage of the Temple's building/hall situated on the land held under Grant 646, Lot 42 Section 2, Town of
D Kangar, District of Perlis pending the resolution of the trial of this case on the plaintiff's undertaking to abide by any order of this Honourable Court or Judge regarding damages if this Honourable Court or Judge hereafter decides has been suffered by the defendants and resulting from this order which
E the plaintiffs ought to pay;

b) an interim injunction restraining the defendant whether by themselves or by their servants or agents from prohibiting the plaintiff's use of the Temple's building/hall situated on the land
F held under Grant 646, Lot 42 section 2, Town of Kangar, District of Perlis to conduct its Biannual General Meeting of the plaintiff on 11 April 2007 or on any subsequent date, pending the resolution of the trial of this case on the plaintiff's undertaking to abide by any order of this Honourable Court
G or Judge regarding damages if this Honourable Court or Judge hereafter decides has been suffered by the defendants and resulting from this order which the plaintiffs ought to pay.

[27] Before the application was heard on 10 April 2007, the
H entire Kangar High Court Writ of Summons 22-05-2007 was withdrawn by the said Ng Thien Lam. It was claimed by the plaintiff that the withdrawal of the suit was without the knowledge, consent and/or approval of the Rumah Tokong committee.

I

[28] Now, the present suit is the third – Kangar Court Writ No: 22-14-2007, the plaintiff sought the orders which I have stated at the beginning of this judgment.

Facts Ascertained From Defendant's Affidavit

[29] Now let us examine the facts which were disclosed in the defendant's affidavit in reply which was affirmed by Tan Chooi Hoo on 23 August 2007.

[30] The defendant averred that the Association was formed and registered on 21 November 1952 under the name of Hock Kian Koay Kuan. However, on 29 November 1989 its name was changed to Perlis Hokkien Association.

[31] The defendant denied that the category of land use of the said land was for 'tokong' only. Upon perusal of the document of title exhibited as exh. 'TLC1' in the first plaintiff's affidavit, no where did it state the said land was for "Rumah Tokong" only. Instead the said land was said to be used as "bendang".

[32] The defendant agreed that the Hokkien Chinese community held their first general meeting in 1963. The following year, the Yang DiPertua of Rumah Tokong committee had written a letter dated 29 February 1964 whereby the said committee had decided to relinquish and handed over the management of the Rumah Tokong Poh Aun Keong to the Association. The reason being 'supaya menepati hasrat tokoh-tokoh yang menubuhnya' (see exh. "LCH5").

[33] The defendant denied that the Rumah Tokong committee was at any time entrusted to hold the properties or assets of the Rumah Tokong. Neither was the Rumah Tokong committee a separate and distinct entity from the Association.

[34] The defendant averred that the members of Rumah Tokong committee were also at the same time the members of the Association. Every meeting held by the Association, two representatives from Rumah Tokong committee would attend it to table the matters pertaining to the Rumah Tokong. This was so because the administration of the Rumah Tokong came under the purview of the Association since 1964.

[35] The defendant also averred that the Rumah Tokong committee was not registered under the Societies Act 1966. There was no such necessity because it was under the supervision and administration of the Association which was a duly registered body.

[36] The defendant confirmed that the said land was transferred to the Association in 1976. It was an outright transfer without any conditions or restrictions attached thereto. Therefore, the Association was the legal registered owner of the said land and entitled to develop it without the interference from the plaintiff.

[37] The defendant averred that the application *vide* Originating Summons No: 24-84-2006 (the first suit) was filed at Kangar High Court by one Yap Hock Siew against the defendant. Upon hearing, the application was dismissed with costs. Thereafter, to avoid the confusion caused by the said suit, on 15 February 2007 the Association proceeded to form a sub-committee to administer the Rumah Tokong.

[38] As regard the plaintiff's claim that the Rumah Tokong committee was unable to hold its AGM on 11 April 2007 at the hall of Rumah Tokong, the defendant said that he had no knowledge of the said meeting. Neither was the Association aware about the letter dated 11 April 2007 which was received by the plaintiff from the Kangar Police District Headquarters (see exh. "TLC 21A").

[39] The defendant repeatedly averred that the Association recognized that the Rumah Tokong had been in existence over the last 100 years. The Rumah Tokong would be preserved in its original state. The Association undertook not to demolish, remove or damage it.

[40] However the defendant conceded that the Association had demolished the 'tokong' stage because it was in dilapidated condition. The Association had intended to build a modern 3-storey building. The new stage would be placed in the said building.

[41] The defendant also averred that the car parks and the hall did not form structural parts of the Rumah Tokong. The hall was in poor condition and its structures were damaged by termites. It was also an illegal structure as it was built without the approved building plan. The new hall would be constructed at the 3rd floor of the said building.

[42] The defendant went on to say that the right of the Hokkien Chinese community would not be oppressed or jeopardised with the development of the said land. They have liberal and free access to the Rumah Tokong to worship, including the plaintiff.

[43] The defendant further averred that in its EGM in 1999, the members had agreed to the commercial development of the said land but the "Rumah Tokong" ought to be preserved. The development would obviously generate profits and benefits to all the members. It would also enhance the landscaping of the said land and Kangar town as a whole.

[44] The developments of the said land were in accordance with the plan No. 429/05 duly approved by Majlis Perbandaran Kangar on 7 December 2005. The defendant too had applied the conversion of the said land to 'bangunan' and it was duly approved by Jabatan Tanah dan Galian, Perlis on 9 April 2007. The defendant had paid all the relevant fees and additional premiums to the State Authority in respect of the development of the said land.

[45] In the Association sub-committee meeting on 12 January 2006, the members including the second plaintiff who was present had unanimously agreed to the development of the said land in accordance with the aforesaid approved plan.

[46] To ensure that the Rumah Tokong would be preserved, the defendant went to the extent of applying a separate document of title of the land on which the Rumah Tokong was situated (see exh. "LCH 13").

Submission By Plaintiffs' Counsel

[47] Learned counsel for the plaintiff submitted that Rumah Tokong committee has the rights to manage and operate the Rumah Tokong. Their rights derive from long standing mutual understanding and agreement relationship between the plaintiff land

A and the Association. This mutual agreement and understanding had all the characteristics of a binding contract. *Timur Permai Holdings Sdn. Bhd v. Soon Seng Plywood & Timber Sdn. Bhd* [1996] 3 CLJ 470.

B **[48]** Learned counsel for the plaintiff argued that the said land was alienated by the Raja of Perlis to the trustees in perpetuity for the benefit of the Hokkien Chinese community for one purpose only, that is, to have the Rumah Tokong on the said land. The Association's commercial development of the said land C is therefore illegal and contrary to the original purpose of alienation.

[49] The Rumah Tokong committee is a separate legal entity from the Association. The Rumah Tokong has been there since 1895 with the full knowledge of the Association. The condition imposed D on the said land is to protect the status and existence of the Rumah Tokong. There is, therefore, a serious question to be tried as to whether the Rumah Tokong committee has a legitimate interest and expectation that the court should protect: *Chellapa K. Kalimuthu v. Sime UEP Properties Bhd* [1999] 3 CLJ 247. E

[50] Further it was also submitted by learned counsel for the plaintiff that the Association would not be prejudiced by the granting of the injunction for reason that, in the event the Association succeeds at trial, any loss suffered by them was purely F financial and quantifiable. The shophouses intended to be built on the said land were not required by them immediately. The Association had admitted to having waited for three years before the commencement of the developments. *Chin Sau Min & Anor v. Sia Sung Ho & Anor* [2005] 3 CLJ 113. G

[51] Learned counsel for the plaintiff urged that the present *status quo* ought to be maintained. If the development of the said land was allowed to proceed, the plaintiff's suit (if successful) would be rendered nugatory as the development would necessarily involve H the destruction or damage to the Rumah Tokong that had been in existence for a long time: *Mohamed Mustafa A. Nalla Ibrahim & Anor v. Syed Mohamed Madar Rawther* [1995] 1 CLJ 219.

[52] Finally it was also submitted by learned counsel for the I plaintiff that the test for an interlocutory injunction as laid down in *Keet Gerald Francis Noel John v. Mohd Noor & Ors* [1995] 1 CLJ 293 had been satisfied and prayed for order in terms of encl. 4 with costs.

Contention By Defendant's Counsel

[53] In reply learned counsel for the defendant submitted that Rumah Tokong committee was an unregistered society and therefore illegal: s. 41(1)(b) Societies Act 1966. It had no *locus standi* to file the application herein.

[54] At any rate, the Rumah Tokong committee had relinquished and handed over the management of the Rumah Tokong to the Association since 1964 (see exh. "LCH5"). Also the Rumah Tokong committee was not a separate entity from the defendant but it was under the supervision of the Association.

[55] Learned counsel for the defendant refuted that the said land was for "Rumah Tokong" only. The category of land use of the said land has since been approved and converted to "bangunan" and its commercial development was in accordance with the law.

[56] It was further argued by learned counsel for the defendant that the Association was the registered proprietor of the said land and entitled under the law to develop it unimpeded. Any buildings or structures on the said land belonged to the Association.

[57] More importantly, the defendant's counsel submitted that the Association would not demolish, damage or remove the Rumah Tokong. The Rumah Tokong would be preserved in its original form. The Rumah Tokong too were accessible to all Hokkien Chinese community to pray or worship there.

[58] The defendant prays that the plaintiff's application for interlocutory injunction *vide* encl. 4 be dismissed with costs.

The Law

[59] In exercising my discretion whether to grant an interlocutory injunction or not, I am guided by the principles stipulated by Gopal Sri Ram JCA in *Keet Gerald Francis Noel John v. Mohd Noor & Ors (supra)*. His Lordship said at pp. 305 and 306 as follows:

> To summarise, a Judge hearing an application for interlocutory injunction should undertake an inquiry along the following lines:
>
> > First, he must ask himself whether the totality of the facts presented before him discloses a *bona fide* serious issue to be tried. He must, when considering this question, bear in mind that the pleadings and evidence are incomplete at that

stage. Above all, he must refrain from making any determination on the merits of the claim or any defence to it. It is sufficient if he identified with precision the issues raised on the joinder and decides whether these are serious enough to merit a trial. If he finds, upon a consideration of all the relevant material before him, including submissions of Counsel, that no serious question is disclosed, that is an end of the matter and the relief is refused. On the other hand if he does find that there are serious questions to be tried, he should move on to the next step of his inquiry;

Second, having found that an issue has been disclosed that requires further investigation, he must consider where the justice of the case lies. In making his assessment, he must take into account all relevant matters, including the practical realities of the case before him. He must weigh the harm that the injunction would produce by its grant against the harm that would result from its refusal. He is entitled to take into account, *inter alia*, the relative financial standing of the litigants before him. If after weighing all matters, he comes to the conclusion that the plaintiff would suffer greater injustice if relief is withheld, then he would be entitled to grant the injunction especially if he is satisfied that the plaintiff is in financial position to meet his undertaking in damages. Similarly, if he concludes that the defendant would suffer the greater injustice by the grant of an injunction, he would be entitled to refuse relief. Of course, cases may arise where the injustice to the plaintiff is so manifest that the Judge would be entitled to dispense with the usual undertaking as to damages (see: *Cheng Hang Guan v. Perumahan Farlim (Penang) Sdn. Bhd.* [1988] 2 CLJ 35; [1988] 1 CLJ (Rep) 435. Apart from such cases, the Judge is entitled to take into account the plaintiff's ability to meet his undertaking in damages should the suit fail, and, in appropriate cases, may require the plaintiff to secure his undertaking, for example, by providing a bank guarantee;

Thirdly, the Judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the trial proper and intended to maintain the *status quo*, an expression explained by Lord Diplock in *Garden Cottage Foods Ltd. v. Milk Marketing Board* [1984] AC 130 and applied in *Cheng Hang Guan (supra)*. It is a judicial

> discretion capable of correction on appeal. Accordingly, the Judge would be entitled to take into account all discretionary considerations, such as delay in the making of the application or any adequate alternative remedy that would satisfy the plaintiff's equity, such as an award of monetary compensation in the event that he succeeds in establishing his claim at the trial. Any question going to the public interest may, and in appropriate cases should, be taken into account. A Judge should briefly set out in his judgment the several factors that weighed in his mind when arriving at his conclusion.

[60] These principles are also summarized in the *Malaysian High Court Practice,* 1998 Desk Edition at p. 1351 as follows:

> In determining whether an interim injunction should be granted, the following principles must be applied. First, there must be a serious question to be tried, ie, whether there is a triable issue that the plaintiff would have a real prospect of succeeding in his claim for a permanent injunction at the trial and that the plaintiff's case is not frivolous or vexatious.
>
> Secondly, whether damages would constitute an adequate remedy, ie, whether the plaintiff would be adequately compensated in damages for the defendant's activities if the plaintiff were to succeed. If so, and if the defendant would be in a financial position to pay damages, then an interim injunction should not be granted however strong the plaintiff's claim is. If the plaintiff's undertaking as to damages would provide adequate damages and the plaintiff would be in a financial position to do so, then an interim injunction should be granted.
>
> Thirdly, a consideration of the balance of convenience and maintenance of the *status quo*. This factor will only arise if there is doubt as to the adequacy of damages to either party or both.

When all other factors are evenly balanced, then prudent measures should be taken in determining whether the *status quo* of the parties ought to be preserved. '*Status quo*' simply means the existing state of things. As from what point of time the *status quo* is to be taken may vary in different cases.

A **Decision Of The Court**

[61] Having considered the plaintiff's and the defendant's affidavits evidence, their respective exhibits annexed thereto and submissions by learned counsels for the plaintiffs and defendant, I had dismissed the plaintiff's application for the interlocutory injunction for reasons hereunder stated.

[62] On the totality of the facts deposed to by the plaintiff and defendant together with documentary evidence exhibited in their respective affidavits, I am of the view that there was no serious issue to be tried. The defendant had repeatedly averred that the Association was not going to demolish, destroy, damage, remove or disturb the Rumah Tokong. On the contrary, the Association recognized the sacredness of the Rumah Tokong and had ensured to preserve it in its original state. The Association had gone to great pains to apply a separate document of title to the land upon which the Rumah Tokong was situated. In exh. "LCH10" of the defendant affidavit the plot allotted to Rumah Tokong was Plot No. 10 measuring 681-78 square meters.

[63] The defendant's counsel also submitted that the Rumah Tokong was accessible to all. Worshipping or praying at the Rumah Tokong was opened, not only to the people of Hokkien origin but also to other Chinese ethnics group.

[64] The Association was the registered proprietor of the said land. It had every right to develop the said land in accordance with the law unimpeded. The said land had been properly converted to "bangunan" which was duly approved by Jabatan Pengarah Tanah Galian, Perlis. Similarly, the building plans were also approved by Majlis Perbandaraan Kangar *vide* plan No: 429/05 on 7 December 2005. Substantial amount of fees and additional premiums had been paid by the Association to the relevant authorities. To put a clog in the form of injunction to the Association endeavour to develop the said land was certainly unfair and inequitable.

[65] Further or in the alternative, the successive suits based substantially on the same subject matter filed by the plaintiff and/or Rumah Tokong committee were attempts to put pressure on the Association to buckle down and abandoned from developing the said land. The first suit *vide* Kangar High Court Originating

Summons No. 24-84-2006 was dismissed, though the appeal to the Court of Appeal is pending. The second suit *vide* Kangar High Court Writ of Summons No. 22-05-2007 was withdrawn, apparently for no valid reason. The current suit is the third and it is obviously an abuse of the court's process.

[66] The crux of the plaintiff's grievances was really about the management of the Rumah Tokong which was taken over by the Association. That being the case, the proper remedy would be to pray for a declaration that Rumah Tokong be managed and operated by the plaintiffs. The plaintiff's resort to injunctive relief, as in this application, is inappropriate and misconceived. It may be likened to a Malay proverb which says 'marahkan nyamuk, kelambu dibakar'.

[67] In the light of the above reasons and in exercising my discretionary power, I dismissed the plaintiffs' application for interlocutory injunction in encl. 4 with costs.